THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 12521 of 2005

Dated 27.10.2005

M/S.Pandarinath Pharma.

..... PETITIONERS

AND

The Commercial Tax Officer,

Kothapeta Circle, Vijayawada and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 12521 of 2005

ORAL ORDER: (per Sri SAR.J)

The petitioner filed this writ petition seeking writ of Mandamus declaring the action of the respondent-Commercial Tax Officer in obtaining a letter dated 24.5.2004 from him with simultaneous issue of notice on the same day for the purpose of collecting the amount of Rs.44,500/- as tax towards the suppressed turn over as well as collection of compounding fee of Rs.89,000/- in cash, in exercise of the powers

under Section 32 of the Andhra Pradesh General Sales Tax Act, 1957 as illegal, arbitrary and contrary to the provisions of the Act as well as the Full Bench judgment of this Court in AMBICA LAMP HOUSE, RAJAHMUNDRY Vs. CTO (INT)-1 ENFORCEMENT, HYDERABAD and consequently sought for a direction to the respondents to refund the amount collected along with interest.

The petitioner is a partnership firm registered as dealer both under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the APGST Act') as well as the Central Sales Tax Act, 1956 (for short 'the CST Act'). It is stated that the petitioner's premises was inspected by the 2nd respondent on 14.5.2004 along with the other staff and during the course of inspection, they found certain irregularities. It is stated that a letter was obtained from the petitioner with reference to the alleged irregularities and accordingly collected an amount of Rs.44,500/- from the petitioner towards tax. Thereafter, a notice dated 24.5.2005 was issued to the petitioner proposing to initiate proceedings under Section 32 of the Act for which the petitioner submitted his reply on the same day i.e. on 24.5.2004 agreeing to pay the compounding fee. It is also stated in the affidavit filed along with the writ petition that these letters were obtained by the authorities under coercion, apart from collecting tax as well as compounding fee without there being any specific order of assessment as well as an order of compounding the alleged offence. Hence, this writ petition.

A counter affidavit is filed on behalf of the respondents disputing the averments made by the petitioner. In the counter affidavit it is specifically stated that to the extent of the suppressed turn over found by the department, the petitioner filed A2 returns admitting the said turn over. Thus, the department has collected the tax correctly and that the said collection is in accordance with the returns filed by the petitioner dealer. Similarly, with reference to the compounding fee, it is sated that in response to the notice issued by the department, the petitioner came forward with a letter dated 24.5.2004 agreeing to pay the compounding fee and accordingly paid the same and therefore there is no illegality or irregularity and the action of the department is not in any way in violation of the provisions of the Act or the judgment of this Court.

Heard both sides and considered the material on record. Admittedly, the department inspected the premises of the petitioner-dealer on 14.5.2004 and found certain irregularities with reference to the turnover and in fact the alleged suppressed turnover was admitted by the petitioner dealer by filing A2 returns as a result of which the petitioner is liable to pay the tax, which the department has collected under self assessment, therefore, there is no illegality or irregularity. Even with reference to the compounding fee that was collected, though the petitioner alleged that the department has collected without any authority of law, the proceedings and even the papers filed by the petitioner shows that a notice was issued by the department and the same was received by it on 21.4.2005 for which a reply was filed on 24.5.2004 agreeing to pay an amount of Rs.89,000/- towards the compounding fee and sought for dropping of further proceedings. In the light of the said letter submitted by the petitioner before the authorities, the collection of compounding fee could not be considered as illegal or without any authority of law. But, however, we make it clear that if ultimately the assessment had resulted in reduction in the amount of estimated tax liability with reference to which the compounding fee was collected, it is open to the petitioner to claim refund of the proportionate amount.

With the above observations, the writ petition is dismissed as devoid of merit. No costs.

(B.SUDERSHAN REDDY,J)

dated 27.10.2005

(S.ANANDA REDDY,J)

msv